

## HULETT HARPER STEWART

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January 23, 2006

The Honorable James Orenstein  
United States Magistrate Judge  
United States District Court for the  
Eastern District of New York  
100 Federal Plaza  
Central Islip, N.Y. 11722-9014

Re: *In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,  
Case No. 1:05-md-1720(JG)(JO)

Dear Magistrate Judge Orenstein:

My law firm represents three class plaintiffs in two of the cases transferred to this Court as part of the above-designated MDL proceeding. We are one of the firms supporting the proposed lead counsel structure of Robins Kaplan Miller & Ciresi, Lerach Coughlin Stoia Geller Rudman & Robbins and Berger & Montague and opposing the Payless Shoesource Group's Cross-Motion. We write now to voice our concern, suggested by questions posed by the Court at the January 12 conference, that the Court may consider appointing Milberg Weiss as a fourth co-lead counsel. Notwithstanding our respect for the Milberg Weiss firm, we believe such an outcome would be unfair to the many plaintiffs that have voiced their support for the particular structure proposed and to the lawyers and law firms which, notwithstanding their own qualifications, agreed to support this structure.

I was one of the lawyers who, notwithstanding extensive antitrust experience and extensive experience litigating against the credit card networks, agreed to support the specific co-lead structure advanced by "Certain Class Counsel." I believe myself to have been qualified to seek a lead position based on my experience. While a senior partner heading up the antitrust department of the San Diego office of the former Milberg Weiss firm (now Lerach Coughlin), I was the lead trial counsel in *Schwartz v. Visa*. In that case, which was tried over 6 months in the Superior Court of California and is now on appeal, the plaintiff achieved a judgment against both Visa and Mastercard for the return of more than \$800 million dollars in network currency conversion fees and a significant change in their disclosure policies. I have also acted as one of the principal counsel in MDL 1409, an action against the Visa and Mastercard networks and its major issuing

Magistrate Judge Orenstein  
January 23, 2006  
Page 2

banks. Since 2003, I have acted as *de facto* lead counsel (together with leads Lerach Coughlin and Berger & Montague) in that case, which is still pending in the Southern District of New York.

I am a former Trial Attorney with the United States Department of Justice Antitrust Division, I have tried both civil and criminal antitrust cases and I have acted as the lead or principal counsel in a significant number of antitrust class actions. These actions include a couple of matters which appear in the Payless Group's lead counsel papers, for instance *Hall v. NCAA*, which I successfully tried to a plaintiffs' verdict in the District of Kansas with (now) Lerach Coughlin attorney, Bonny Sweeney. Our cases are among the first filed and I have been involved in researching and framing the broader interchange price fixing claims represented by Certain Class Counsel from the outset.

The Certain Class Counsel's proposal represents a careful consensus among a large number of qualified counsel, including myself. We support the structure advanced by Certain Class Counsel, but if the Court were inclined to consider some structure other than that proposed by Certain Class Counsel, or if the Robins Kaplan firm were to be disqualified, my firm would want to be included in the lead counsel structure. With no disrespect to Milberg Weiss, which is a fine firm, in this matter their qualifications to act as lead counsel are not equal to those advanced by the Certain Class Counsel nor superior to several other counsel which have agreed to support that structure.

Respectfully,



DENNIS STEWART

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